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Date of Decision: 12th October 1995

SPECIAL CIVIL APPLICATION NO. 8446 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Shri H.M. Mehta, Senior Advocate, with Smt. Vasavdatta Bhatt,
Advocate, for the Petitioner

Shri D.N. Patel, Asst. Government Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 12th October 1995)

ORAL JUDGMENT

The show-cause notice issued by the Collector of Dangs at Ahwa (the Respondent herein) on 21st/24th July 1995 and the interim direction issued by him on 4th/6th August 1995 are under challenge in this petition under Art. 226 of the Constitution of India. By the impugned show-cause notice, the petitioner is called upon to show cause why the land granted to the petitioner

should not be resumed for breach of Condition No. 8. By the interim direction, the petitioner is prevented from making any construction on the land granted to the petitioner.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is a Trust registered under the Bombay Public Trust Act, 1950. Its Registration No. is B-2 Dangs. It carries on various educational activities including running a madressa (that is, a school). It applied for land for the purpose of its school. Land bearing Survey No. 629 in all admeasuring 477.99 square meters came to be granted by the respondent by the order passed on 16th March 1995 on certain terms and conditions. Its copy is at Annexure C to this petition. It appears that the respondent got information that whatever construction was made was used by the petitioner for the purposes different from the purpose for which it was granted. Thereupon one show-cause notice came to be issued on 21st/24th July 1995 calling upon the petitioner to show cause why the land in question should not be resumed. Its copy is at Annexure A to this petition. With a view to preventing further construction activity on the land in question, the respondent issued one inter.....

construction on the land in question. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. Since the petitioner has been prevented from making any further construction by the interim direction contained in the order at Annexure B to this petition, by consent of the learned lawyers appearing for the parties, this petition is taken up for its final hearing and disposal today itself.

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#2).....(sca.8446.95 #2).....

4. So far as the show-cause notice at Annexure A to this petition is concerned, it does not furnish particulars as to how the land or the construction raised thereon is used for a purpose different from the purpose for which it was granted by the order at Annexure C to this petition. Besides, user of the land in question for a purpose different from the purpose for which it is granted could not be said to be violative of condition No. 8 of the order at Annexure C to this petition. Learned Assistant Government Pleader Shri Patel for the respondent submits that violation is of condition No. 8 of the order passed on 30th July 1991 by which the land was granted to the petitioner. He has shown to me a copy of the said order. Anyway, I have perused that order and it is difficult to come to the conclusion that by user of the land for the purpose

different from the one for which it is granted would not amount to violation of condition No. 8 thereof. That apart, the petitioner has clearly averred in this petition that the land in question and the construction raised thereon are used only for the purpose of a madressa (a school) and for no other purpose. It is not shown by or on behalf of the petitioner as to for what other purpose the land or the construction thereon is used. The impugned show-cause notice can therefore be said to be vague. It cannot therefore be sustained in law.

4. Learned Assistant Government Pleader Shri Patel for the respondent points out to me the order at Annexure B to this petition giving interim direction against further construction that the different user was indicated therein and that was as a mosque. The petitioner in this petition has clearly averred that no mosque is built in the land in question and it proposes not to build any mosque thereon. Learned Counsel Shri Mehta for the petitioner has stated that the plan of the building has been approved by the respondent and the petitioner will carry on construction strictly according to the said plan.

5. It has been urged by Shri Mehta for the petitioner that occasional prayers are offered in the construction raised on the land in question. It has been urged that, since there is no mosque in the small town, people often offer prayers in congregation. Offer of prayers in congregation at a place would not certainly convert that place into a mosque. It may not be uncommon that a room in a house or a railway platform or a train compartment is used for offering prayers in congregation. That would not convert such house or railway platform or train compartment into a mosque. The concept of a mosque is different from any and every place used for offering congregational prayers. It is not the case of the respondent that the construction on the land in question is used for pronouncing azaan at the time of the prayers from the house-top. In fact, in a mosque an azaan is pronounced from a minaret. Besides, the petitioner has clearly averred in this petition that, unlike a mosque, the petitioner has not made any mehrab (a separate place signifying the direction to which prayers have to be offered) in the construction raised on the land in question. In a mosque, a mehrab is usually a must, as submitted by learned Counsel Shri Mehta for the petitioner.

6. I am told by learned Counsel Shri Mehta for the petitioner on the strength of para 4 of the petition that the petitioner has applied for grant of land for the purpose of raising a mosque. That would by itself go to show and to suggest that the construction raised on the land in question is not being used as a mosque.

7. As rightly submitted by learned Assistant Government

Pleader Shri Patel for the respondent, ordinarily this court does not interfere at the stage of a show-cause notice. In this case however the show-cause notice is found to be vague. No useful purpose will be served by directing the petitioner to appear before the authority and to show cause why the suggested action should not be taken. It would be quite difficult for the petitioner to cause a reply to such vague show-cause notice. In that view of the matter, I have thought it fit that this court should interfere at the stage of the show-cause notice itself so as to avoid any future complications in that regard.

8. So far as the interim direction at Annexure B to this petition is concerned, it is obviously pursuant to the show-cause notice at Annexure A to this petition. If the show-cause notice at Annexure A to this petition is not sustainable in law, the interim direction cannot survive.

9. In this connection a reference deserves to be made to the Division Bench ruling of this court in the case of Vasantlal Chhotalal Khandwala v. The State of Gujarat and Others reported in AIR 1994 Gujarat 26. This court held therein that no interim direction can be issued without initiation of any proceeding under sec.34 of the Urban Land (Ceiling and Regulation) Act, 1976 by means of a show-cause notice. By analogy, the aforesaid principle of law enunciated by this court in its aforesaid Division Bench ruling will be applicable in the present case. The interim direction by the order at Annexure B to this petition cannot independently survive.

9. In the result, this petition is accepted. The show-cause notice issued by the collector of Dangs at Ahwa on 21st/24th July 1995 at Annexure A to this petition is quashed and set aside and so also the interim direction issued by the order passed on 4th/6th August 1995 at Annexure B to this petition. Rule is accordingly made absolute with no order as to costs.
